IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5057 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAY BHARAT FABRICS MILL LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 5057 of 2004
MR PARESH M DAVE for Petitioner No. 1-2
MR JITENDRA MALKAN for Respondent No. 1
DS AFF.NOT FILED (R) for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 07/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Learned Customs Excise and Service Tax Appellate Tribunal (for short "the Appellate Tribunal") dismissed the appeal of the petitioner-appellant by its order dated 28.2.2004 on the short ground that "the Appellate Tribunal Cannot go into the question of vires of any rules framed under the Central Excise Act. Both the decisions relied upon by the learned Advocate wherein the lapsing of the Credit was not found justified were pronounced by the Supreme Court and the High Court which can go into the vires of any provision of the law. We, therefore, found no merit in the appeal which is rejected".

Both the learned counsel for the parties agreed that there was no question of challenge to the vires of the Rule 57H(7A), therefore, the Appellate Tribunal was required to go into the matter on merits and decide the same in accordance with law.

In view of the above, this petition is allowed and the impugned order at Annexure-E dated 20.2.2004 passed by the Appellate Tribunal dismissing the appeal is hereby quashed and set aside and the matter is remanded to the learned Tribunal for its fresh decision on merits, after hearing the concerned parties. Rule is made absolute. Interim relief stands vacated. No order as to costs.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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